IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**Case No. 4:05-cv-00329-GKF-SAJ**
	)	
TYSON FOODS, INC., et al.	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' MOTION TO REQUIRE CONSOLIDATION OF PLAINTIFFS' EXCESSIVE RESPONSES OR IN THE ALTERNATIVE FOR ADDITIONAL TIME TO REPLY

Plaintiffs filed two separate, full-length responses to Defendants' Rule 19 Motion. Defendants respectfully move the Court for an order requiring Plaintiffs to consolidate their responses to Defendants' Rule 19 Motion to comply with the Court's page limits. In the alternative, Defendants move the Court for an additional two weeks to prepare their responses to Plaintiffs' excessive briefing, as Defendants must now draft two replies.

On October 31, 2008, Defendants filed a motion to dismiss for failure to join the Cherokee Nation as a required party. *See* Dkt. No. 1788 ("Rule 19 Motion"). Plaintiffs then moved for an additional 28 days to prepare their response, Dkt. No. 1795 (filed Nov. 7, 2008), which the Court granted on November 17, 2008, Dkt. No. 1800. Although nothing in Plaintiffs' request for additional time sought permission to file multiple response briefs, Plaintiffs filed two separate briefs in opposition. First, Plaintiffs filed a "Response in Opposition to 'Defendants' Motion to Dismiss For Failure to Join the Cherokee Nation as a Required Party' [DKT #1788]", Dkt. No. 1810 (filed Dec. 15, 2008) (the "Cherokee Opposition"). Second, Plaintiffs filed a "Response In Opposition To 'Defendants' Motion For Judgment As a Matter of Law Based On a

Lack of Standing' [Dkt # 1790]," Dkt. No. 1811 (filed Dec. 15, 2008) (the "Standing Opposition"). These two opposition briefs combine for a total of 45 pages of argument, well in excess of the 25 page limit set by LCvR 7.2(c).

Because Plaintiffs exceeded the page limit without permission they should be required to consolidate their responses into a single, compliant brief. Alternatively, Defendants request additional time to respond.[1]

I. Plaintiffs Briefs In Opposition Are Excessive And Should Be Consolidated

Pursuant to LCvR 7.2(c), briefs in opposition to a motion shall not exceed 25 pages absent leave of the Court. Defendants filed a single motion, to which Plaintiffs responded with 45 pages of substantive briefing. Moreover, each opposition incorporates the other. *See* Cherokee Opposition at 1 n.1; Standing Opposition at 1, n.1. Plaintiffs' oppositions therefore plainly violate Rule 7.2(c). Plaintiffs explain their twin filings in footnote 1 of each brief, asserting that "the Court split [Defendants' Rule 19 Motion] into two motions," which Plaintiffs took to justify their filing two oppositions. *See* Cherokee Opposition at 1 n.1; Standing Opposition at 1, n.1. Plaintiffs' explanation is inconsistent with both the Court's practice and their own prior conduct.

First, the Court did not "split" Defendants' motion. Rather, the docketing entries to which Plaintiffs cite are merely an administrative exercise by the Clerks' Office designed to assist with tracking the disposition of the various types of requests made in motions. As explained in the attached declaration, counsel for the Tyson Defendants contacted the Clerk's Office to understand the modifications to the docket. *See* Ex. 1 (Affidavit of James Wedeking). In brief, because Defendants sought relief in the alternative, the Clerk's Office linked

[1] On December 19, Defendants conferred with Plaintiffs and offered to consent to an additional extension to allow Plaintiffs to consolidate their two briefs. Plaintiffs refused.

Defendants' motion to two different docketing entries to allow the Court's ruling on the requested types of relief, whatever it may be, to be quickly and clearly recorded. Emphatically, the Clerk did not "split" or in any way create a new, separate motion authorizing an entirely separate 25-page responsive brief. *Id.*; *see also* Ex. 2 (relevant docket entries).

Second, Plaintiffs' conduct is inconsistent with their own prior practice. Identical docket modifications have been made repeatedly throughout this case to reflect instances where the defendants have requested alternative forms of relief in the same motion, *see, e.g.*, Ex. 2. at Dkt. Nos. 67 (split into Dkt. Nos. 67 and 91), 75 (split into Dkt. No. 75 and 90), 125 (split into Dkt. Nos. 125 and 126), 493 (split into Dkt. Nos. 493 and 503), yet, Plaintiffs have never before filed multiple responsive briefs, *see, e.g.*, Exh. B. Dkt. Nos. 134 (filing single response to motion at Dkt. Nos. 75 and 90); 139 (filing single response to motion at Dkt. Nos. 125 and 126), 142 (filing single response to motion at Dkt. Nos. 67 and 91), 566 (filing single response to motion at Dkt. Nos. 493 and 503). Thus, Plaintiffs' rationale is not supported by the Clerk's practice and is inconsistent with the parties' past practice.

By filing two briefs, Plaintiffs gave themselves a 45 page response to Defendants' 25-page motion.[2] This is fundamentally unfair. To the extent Plaintiffs found themselves unsure as to what to file, they should have sought consent from Defendants and clarification or approval from the Court. Having already secured a 28 day extension Plaintiffs had ample time to do so, yet they did not. Under such circumstances, the Court would be well within its discretion to strike one or both of Plaintiffs' briefs in opposition. *See Lifeblood Biomedical, Inc. v. Mann*, 2005 U.S. Dist. LEXIS 35473, at **3-6 (D. Colo. Dec. 14, 2005) ("allow[ing] a party to file

[2] Plaintiffs' filing is excessive by any measure. Even accepting Plaintiffs' belief that Defendants had filed two motions, their briefs still violate the page limit by incorporating each other, thus responding to each motion with 45 pages of briefing.

multiple briefs relating to a single motion with each brief individually subject to the [] page limit would completely undermine the goal of reducing the length of the filings"). *See also Williams v. Lakin*, 2008 U.S. Dist. LEXIS 36690 (N.D. Okla. May 2, 2008) (Frizzell, J.) (granting motion to strike reply memoranda, in part, for exceeding page limitations); *Barth v. Wolf Creek Nuclear Operating Corp.*, 1999 U.S. Dist. LEXIS 17241 (D. Kan. Sept. 15, 1999) (striking motions for summary judgment exceeding 40 page limitation); *Oleson v. Kmart Corp.*, 185 F.R.D. 631 (D. Kan. 1999) (denying motions to dismiss without review of the merits for violation of page limitations). But Defendants do not ask the Court to strike Plaintiffs' response briefs. Rather, Defendants request only that Plaintiffs be required to consolidate their briefs in opposition into a single, compliant response.

II. Alternatively, Defendants Request Additional Time to Respond to Plaintiffs' Excessive Briefing

If the Court elects not to require Plaintiffs to file a single response brief, Defendants respectfully move for additional time to prepare their two replies.

Additional time is warranted for a number of reasons. First, Defendants will now have to prepare replies to two oppositions rather than one, both over the holiday season. Second, at the same time Defendants are preparing their briefs opposing Plaintiffs' appeal of the Court's denial of their motion for a preliminary injunction. Third, Defendants are working to conclude production of their expert reports and materials. Fourth, Defendants' obligation to reply to Plaintiffs oppositions to the Rule 19 motion coincides with these obligations only because Plaintiffs were granted an additional 28 days to respond to Defendants' Rule 19 Motion in the first instance. Dkt. No. 1800.

CONCLUSION

For the foregoing reasons, Defendants move the Court either to require Plaintiffs to file a

single, consolidated brief, or for an additional two weeks to reply to each of Plaintiffs' responses.

Respectfully submitted,

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